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DIVISION II

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STATE OF WASHINGTON

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No. 51962-3-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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FELICIA WILSON,

APPELLANT,

v.

TIMBERLAND REGIONAL LIBRARY

RESPONDENT.

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BRIEF OF APPELLANT

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Venita M. Lang, WSBA #18336  
Attorney for Appellant

6212 34TH Street NW  
Gig Harbor, WA 98335  
(253) 265-1235

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ASSIGNMENTS OF ERROR .....	1
	Assignments of Error	
	No. 1 .....	1
	Issues Pertaining to Assignments of Error	
	No. 1 .....	1
	No. 2 .....	1
III.	STATEMENT OF THE CASE .....	2
IV.	ARGUMENT .....	13
V.	CONCLUSION .....	23

## TABLE OF AUTHORITIES

### Table of Cases

<i>Campbell v. State</i> , 129 Wn.App. 10, 23, 118 P.3d 888 (2005) .....	20
<i>Fell v. Spokane Transit Auth.</i> , 128 Wn.2d 618, 911 P.2d 1319 (1996) .....	18
<i>Grimwood v. Univ. of Puget Sound, Inc.</i> , 110 Wn.2d 355, 753 P.2d 517 (1988) .....	17
<i>Hill v. BCTI Income Fund-I</i> , 144 Wn.2d 172, 23 P.3d 440 (2001) .....	17
<i>Hume v. Am. Disposal Co.</i> , 124 Wn.2d 656, 880 P.2d 988 (1994) .....	16
<i>Kastanis v. Educ. Emps. Credit Union</i> , 122 Wn.2d 483, 859 P.2d 26 (1993) .....	17, 19
<i>Kelley v. Tonda</i> , 198 Wn. App. 303, 393 P.3d 824 (2017) .....	14
<i>Kuyper v. Dep't of Wildlife</i> , 79 Wn. App. 732, 904 P.2d 793 (1995) .....	14
<i>McClarty v. Totem Elec.</i> , 157 Wn.2d 214, 137 P.3d 844 (2006) .....	17
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) .....	16, 17
<i>Owen v. Burlington N. Santa Fe R.R.</i> , 153 Wn.2d 780, 108 P.3d 1220 (2005) .....	13

<i>Rice v. Offshore Systems, Inc.</i> , 167 Wn. App. 77, 272 P.3d 865 (2012) .....	14, 15
<i>Riehl v. Foodmaker, Inc.</i> , 152 Wn.2d 138, 94 P.3d 930 (2004) .....	15
<i>Sanders v. Day</i> , 2 Wn. App. 393, 468 P.2d 452 (1970) .....	14
<i>Sangster v. Albertson's, Inc.</i> , 99 Wn. App. 156, 991 P.2d 674 (2000) .....	14
<i>Scharf v. Department Of The Air Force</i> , 710 F.2d 1572 (Fed. Cir. 1983) .....	19
<i>Scrivener v. Clark College</i> , 181 Wn.2d 439, 334 P.3d 541 (2014) .....	14, 16, 17, 18
<i>Selstead v. Washington Mutual Savings Bank</i> , 69 Wn. App. 852, 851 P.2d 716 (1993) .....	15
<i>Southside Tabernacle v. Pentecostal Church of God, Pac. Nw. Dist., Inc.</i> , 32 Wn. App. 814, 650 P.2d 231 (1982) .....	14
<i>Travis v. Tacoma Public School Dist.</i> , 120 Wn. App. 542, 85 P.3d 959, (2004) .....	19
<i>Vallandigham v. Clover Park Sch. Dist. No. 400</i> , 154 Wn.2d 16, 109 P.3d 805 (2005) .....	14
<i>Wash. Fed. v. Harvey</i> , 182 Wn.2d 335, 340 P.3d 846 (2015) .....	13
<i>Wilmot v. Kaiser Alum. &amp; Chem. Corp.</i> , 118 Wn.2d 46, 821 P.2d 18 (1991) .....	18



Constitutional Provisions

Statutes

<i>RCW 49.60.010</i> .....	15
<i>RCW 49.60.020</i> .....	16

## I. INTRODUCTION

Felicia Williams filed a complaint against Timberland Regional Library (Timberland) alleging hostile work environment, disparate treatment, retaliation and constructive discharge.<sup>1</sup> Timberland filed a motion for summary judgment, and prevailed at the superior court level. The summary judgment motion was granted, dismissing all of Felicia Wilson's claims.<sup>2</sup> Felicia Wilson appeals the superior court's order granting summary judgment.

## II. ASSIGNMENTS OF ERROR

1. The trial court erred in granting Timberland's motion for summary judgement.

### Issues Pertaining to Assignments of Error

1. Whether the trial court erred in granting summary judgment when there were material facts in dispute, and where said court failed to view said facts in a light most favorable to the non-moving party.

2. Whether the trial court erred in finding that there was no

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<sup>1</sup> CP 3-9.

<sup>2</sup> CP 420-421.

admissible evidence sufficient to survive summary judgment.

### III. STATEMENT OF THE CASE

Felicia Wilson is an African American women who was hired at Timberland Regional Library (hereinafter referred to as Timberland) as a collection services manager in October of 2011.<sup>3</sup> She was employed at Timberland until February of 2017.<sup>4</sup> As the collections manager, Ms. Wilson was in charge of the selection, maintenance and distribution of all library materials for the entire system.<sup>5</sup> Ms. Wilson was a part of the administrative team and was the only African American on the administrative team.<sup>6</sup>

Ms. Wilson has extensive experience in the field of library sciences. Prior to coming to work at Timberland, she was employed at the Library of Congress in Washington, D.C., as a supervisory librarian.<sup>7</sup>

Shortly after Ms. Wilson began working at Timberland, the HR

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<sup>3</sup> CP 290, 8:22-24; CP 291, 10:16-21.

<sup>4</sup> CP 299, 45:16-18.

<sup>5</sup> CP 147-149; CP 290.

<sup>6</sup> CP 360, 21:4-15; 24:2-5.

<sup>7</sup> CP 290, 7:7-25; 8:6-8.

director (at that time), Richard Park, began to go around Ms. Wilson's back and question her accomplishments as the collection manager to Ms. Wilson's subordinates.<sup>8</sup> This was not done to non African American managers.

Ms. Wilson then felt compelled to submit a summary of her accomplishments to counter the suggestion that her job performance was in some way not satisfactory.<sup>9</sup> She felt the complaints behind her back to subordinates was a way of sabotaging her. Ms. Wilson's performance reviews in 2013 and 2014 were always excellent.<sup>10</sup>

As Ms. Wilson's actual job performance continued to be beyond satisfactory, she was subjected to hostility on matters other than her actual job performance. For example, the interim director, Gwen Culp, would often abruptly and with hostility correct Ms. Wilson on her cultural grammar on the use of the word "y'all," in administrative team meetings in front of Ms. Wilson's peers.<sup>11</sup> The use of the word "y'all" for Ms. Wilson was part of her African American and southern culture.

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<sup>8</sup> CP 291, 13:19-25; CP 292, 14:1-15:4.

<sup>9</sup> CP 259-261; CP 292, 14:22-25; 15:1-4.

<sup>10</sup> CP 150-163; CP 265-277.

<sup>11</sup> CP 292, 15:15-25.

Ms. Wilson was also subjected to non-verbal means of intimidation while working at Timberland. Starting in May of 2017, the HR director, Richard Park, would often walk through the department that Ms. Wilson managed and literally watch and stare at her and her employees as a way of intimidation.<sup>12</sup>

During Ms. Wilson's employment at Timberland, she was treated differently than other managers. When the Timberland director was out of the library, it was the practice to place someone from the management team in charge during the director's absence. Ms. Wilson, as part of the management team should have been, but was never given the opportunity to be placed in charge when the director was gone. Instead, this opportunity to fill in for the director was given to a non African American person.<sup>13</sup>

In March of 2015, Ms. Wilson learned that her supervisor, director Cheryl Heywood had asked several staff members to spy on Ms. Wilson and to report back to director Heywood all of Ms. Wilson's activities throughout the day.<sup>14</sup> Administrative assistant Jon Anson informed Ms.

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<sup>12</sup> CP 293, 18:21-20:23.

<sup>13</sup> CP 293, 21:8-25; CP 294, 22:1-23:22.

<sup>14</sup> CP 295, 28:6-23; CP 392, 16:17-25.

Wilson that director Heywood asked administrative assistants to watch and observe Ms. Wilson and to write down everything they saw her do.<sup>15</sup> Whenever Ms. Wilson left her office to conduct business, director Heywood assumed that she was meandering.<sup>16</sup> Another manager, Kristine Tardiff, would often accuse Ms. Wilson of talking too loudly in the building. Ms. Wilson testified that, "it just seems like to be a stereotype of either I'm the angry black woman, or I'm the loud black woman or I'm the not working black woman."<sup>17</sup>

Tardiff would also state that she received a written complaint about the collections which Ms. Wilson was in charge of, but upon inquiry, it was determined that Ms. Tardiff made the complaint up and that there was no written complaint.<sup>18</sup> On another occasion, when Ms. Wilson made a joke about a staff member being sick when Ms. Wilson needed her, business manager Rick Homchick came and stood one foot from Ms. Wilson with his

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<sup>15</sup> CP 295, 28:21-29:3; CP 329, 8:1-24.

<sup>16</sup> CP 296, 30:5-31:2.

<sup>17</sup> CP 296, 31:4-13.

<sup>18</sup> CP 344, 8:20-25; CP 345, 9:1-14.



arms crossed staring at her in a threatening manner.<sup>19</sup>

Ms. Wilson, feeling that she was being treated in a racially disparate manner, and a hostile environment, complained to the HR manager in October of 2015.<sup>20</sup> The treatment towards Ms. Wilson continued to decline. Director Heywood took action to disrupt Ms. Wilson's department by taking away staff resources, in an attempt to sabotage her performance.<sup>21</sup> Director Heywood also permitted others on the management team to talk offensively and yell at Ms. Wilson during director meetings, which took place several times a month.<sup>22</sup> Director Heywood also started meetings 30 minutes before the time Ms. Wilson was informed the meeting would start.<sup>23</sup> Director Heywood denies that she changed the time of administrative meetings without telling Ms. Wilson.<sup>24</sup>

Ms. Wilson testified: "So I got to the point between feeling like everything I was doing was being watched, feeling like I was being

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<sup>19</sup> CP 296, 31:14-32:5.

<sup>20</sup> CP 297, 37:18-25; CP 298, 38:1-39:6.

<sup>21</sup> CP 298, 39:16-40:22.

<sup>22</sup> CP 299, 42:1-24.

<sup>23</sup> CP 299, 42:25-43:20.

<sup>24</sup> CP 362, 31:2-10.

undermined in my role as a manager, feeling like I was not being treated as just a manager.”<sup>25</sup> Director Heywood would ignore Ms. Wilson if others were not around. If director Heywood walked past Ms. Wilson in the hallway, director Heywood would not speak to Ms. Wilson.<sup>26</sup> Jon Anson described director Heywood as going out of her way to avoid eye contact or verbal contact with Ms. Wilson.<sup>27</sup> Human Resource manager at Timberland, Walter Bracy, confirmed that Ms. Wilson complained to him about the different treatment she was receiving from director Heywood and manager Tardiff.<sup>28</sup> Mr. Bracy also confirmed that Ms. Wilson had no performance issues, but that director Heywood wanted to document her actions throughout the day nevertheless.<sup>29</sup>

Director Heywood admits that Ms. Wilson was very good at running her department in collections services.<sup>30</sup> However director Heywood was critical of Ms. Wilson because Ms. Wilson talked to other staff members in

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<sup>25</sup> CP 300, 46:5-8.

<sup>26</sup> CP 300, 46:9-19; CP 302, 56:12-57:5.

<sup>27</sup> CP 331, 15:19-16:6.

<sup>28</sup> CP 336, 8:10-25; CP 337, 9:1-11.

<sup>29</sup> CP 338, 14:22-15:20.

<sup>30</sup> CP 357, 10:8-15.



passing.<sup>31</sup> Director Heywood denies that she ever treated Ms. Wilson in a discriminatory way, talked to her harshly or disrespectfully or different than other staff.<sup>32</sup> Director Heywood denies asking other employees to watch and document Ms. Wilson's actions and activities at work.<sup>33</sup> Director Heywood does not recall allowing the facilities manager to yell at Ms. Wilson during an administrative team meeting.<sup>34</sup> Finally director Heywood denies making any negative comments about Ms. Wilson to others.<sup>35</sup>

Ms. Wilson's co-workers all testified that she was pleasant to work with. Payroll specialist Jayne Patrick and Jon Anson had no problem working with Ms. Wilson and testified that she was pleasant to work with.<sup>36</sup> Robin Bradford testified that plaintiff was a good manager.<sup>37</sup> Kim Storbeck was one the of the employees that Ms Wilson supervised and she got along

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<sup>31</sup> CP 358, 13:18-15:24.

<sup>32</sup> CP 358, 15:7-13; CP 363, 35:6-8.

<sup>33</sup> CP 358, 15:16-20.

<sup>34</sup> CP 360, 24:2-24.

<sup>35</sup> CP 359, 20:2-4.

<sup>36</sup> CP 325, 7:20-8:6; CP 330, 9:20-25.

<sup>37</sup> CP 344, 6:18-7:10.

with Ms. Wilson and found her to be very competent and a good boss.<sup>38</sup> Ryan Williams, district manager of circulation, also got along well with Ms. Wilson.<sup>39</sup>

Manager Alice Goudeaux got along great with Ms. Wilson and though Ms. Wilson did a great job as a manager.<sup>40</sup> Goudeaux, also an African American woman, was falsely accused of talking or gossiping with Ms. Wilson too much by manager Tardiff.<sup>41</sup> Ms. Wilson always carried herself in a professional manner at work.<sup>42</sup>

Ms. Wilson then applied for a promotional position with the Pierce County library system. She learned that her supervisor, director Heywood had expressed a negative opinion of her to Georgia Lomax, the director of the Pierce County library, which caused her to not get the position.<sup>43</sup> Pierce County director Lomax denied having a conversation about Ms. Wilson with

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<sup>38</sup> CP 383, 5:7-6:13.

<sup>39</sup> CP 398, 11:19-21.

<sup>40</sup> CP 351, 9:7-11.

<sup>41</sup> CP 351, 12:12-21.

<sup>42</sup> CP 352, 16:15-22.

<sup>43</sup> CP 297, 34:22-37:12.

director Heywood.<sup>44</sup> Director Heywood does recall going to lunch with Ms. Lomax, the director of Pierce County library on June 15, 2015, where Ms. Lomax brought up the fact that Ms. Wilson had applied for a position at the Pierce County library and began talking about Ms. Wilson's interview, alleging that Ms. Wilson came across as "angry." However, according to director Heywood, she said nothing positive about Ms. Wilson, and said nothing at all.<sup>45</sup> Prior to the interaction between directors Heywood and Lomax, to discuss Ms. Wilson's application for a position in Pierce County, Ms. Wilson had been the strongest candidate of the top two candidates.<sup>46</sup> After the Lomax/Heywood conversation about Ms. Wilson, director Heywood sabotaged Ms. Wilson's chances for employment with Pierce County, and Ms. Wilson was somehow determined to be no longer qualified. However, Ms. Wilson's 2015 job performance evaluation was excellent.<sup>47</sup>

Ms. Wilson filed an EEOC charge of discrimination on November 4, 2015, regarding director Heywood's actions in interfering and sabotaging her efforts to employ with Pierce County, in violation of Timberland's policy

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<sup>44</sup> CP 314, 9:19-10:1; CP 316, 18:10-13.

<sup>45</sup> CP 361, 28:1-3; CP 201-204.

<sup>46</sup> CP 164-180, CP 253-257; CP 278-282.

<sup>47</sup> CP 190-197.

against discrimination.<sup>48</sup> After Ms. Wilson filed a EEOC race discrimination charge, director Heywood began to increasingly retaliate and sabotage Ms. Wilson's performance by criticizing Ms. Wilson's communication skills with staff, even though the only people that had problems with Ms. Wilson were director Heywood and manager Tardiff.<sup>49</sup>

Manager Tardiff also made concerted efforts to interfere with Ms. Wilson's department, without Ms. Wilson's consent or approval, before Tardiff resigned.<sup>50</sup> Because of Tardiff's actions encroaching on Ms. Wilson's department, Ms. Wilson attempted to clarify the dispute with Tardiff, stating "Am I understand that Timothy emptied out an area that up until now belonged to Public Services, yet me and my staff are expected to clean up behind you?"<sup>51</sup> Tardiff perceived this straight forward email as being "unprofessional" and got plaintiff disciplined by director Heywood who accused plaintiff of being unprofessional and of talking to staff members too much.<sup>52</sup>

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<sup>48</sup> CP 184-189; CP 205-209.

<sup>49</sup> CP 198-200; CP 227-230; CP 239-242.

<sup>50</sup> CP 210-211; CP 243-244.

<sup>51</sup> CP 212-213; CP 231-239.

<sup>52</sup> CP 212-219.

Kitty Koziesek was a collection service supervisor managed by Ms. Wilson and testified that Ms. Wilson was an excellent manager.<sup>53</sup> Ms. Koziesek knew that Ms. Wilson was being disrespected in administrative team meetings by manager Tardiff and director Heywood.<sup>54</sup> Ms. Koziesek witnessed manager Tardiff treat Ms. Wilson disrespectfully and make false accusations against Ms. Wilson and her department in an attempt to sabotage Ms. Wilson's career.<sup>55</sup>

The executive assistant to director Heywood was Brenda Lane. Ms. Lane confirmed that Ms. Heywood would not interact with Ms. Wilson.<sup>56</sup> Ms. Lane testified that Ms. Wilson was a very intelligent library manager and a great supervisor.<sup>57</sup> Executive assistant Lane confirmed in testimony that director Heywood did repeatedly ask her to track and write down everything that Ms. Wilson was doing throughout the day to "document against" Ms. Wilson.<sup>58</sup> Ms. Lane also confirmed that manager Tardiff would go behind

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<sup>53</sup> CP 367, 5:1-22; CP 368, 12:11-15.

<sup>54</sup> CP 367, 6:6-7:1.

<sup>55</sup> CP 367, 7:13-8:14; CP 370, 17:5-19:8, 20:3-25; CP 371 21:1-22:10.

<sup>56</sup> CP 375, 6:5-12.

<sup>57</sup> CP 375, 6:13-21.

<sup>58</sup> CP 376, 9:8-10:10.



Ms. Wilson's back and make secret complaints about her to director Heywood, instead of telling Ms. Wilson what her issues were.<sup>59</sup> Tardiff falsely accused Ms. Wilson of saying disparaging things about her, and then made another baseless complaint to director Heywood against Ms. Wilson.<sup>60</sup>

Due to the "treatment" Ms. Wilson was subjected to at Timberland, she submitted her resignation, and left the State of Washington, taking employment elsewhere.<sup>61</sup> Ms. Wilson's last day on the job at Timberland was on January 24, 2017, however, because of accrued leave, she remained on the payroll until February 28, 2017.<sup>62</sup>

#### IV. ARGUMENT

This Court reviews the grant of summary judgment de novo. *Wash. Fed. v. Harvey*, 182 Wn.2d 335, 339, 340 P.3d 846 (2015). Summary judgment is proper when there are no genuine issues of material fact. CR 56(c). "A material fact is one that affects the outcome of the litigation." *Owen v. Burlington N. Santa Fe R.R.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005).

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<sup>59</sup> CP 376, 12:7-25; CP 377, 13:1-4.

<sup>60</sup> CP 377, 16:23-25; CP 378, 17:1-14; CP 390, 6:20-7:20.

<sup>61</sup> CP 299, 45:20-25; CP 300, 46:1-19.

<sup>62</sup> CP299, 45:16-18.

This Court must view all facts and reasonable inferences in a light most favorable to the nonmoving party. *Rice v. Offshore Systems, Inc.* 167 Wn. App. 77, 88, 272 P.3d 865 (2012); *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

“The object and function of summary judgment procedure is to avoid a useless trial. A trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact.” *Kelley v. Tonda*, 198 Wn. App. 303, 310, 393 P.3d 824 (2017) (internal citation omitted). “[E]ven if the basic facts are not in dispute, if the facts are subject to reasonable conflicting inferences, summary judgment is improper” because the trier of fact must resolve such inferences. *Southside Tabernacle v. Pentecostal Church of God, Pac. Nw. Dist., Inc.*, 32 Wn. App. 814, 821, 650 P.2d 231 (1982); *Kuyper v. Dep’t of Wildlife*, 79 Wn. App. 732, 739, 904 P.2d 793 (1995). “Summary judgment procedures are not designed to resolve inferential disputes.” *Sanders v. Day*, 2 Wn. App. 393, 398, 468 P.2d 452 (1970).

"Summary judgment should rarely be granted in employment discrimination cases. " *Rice v. Offshore Systems, Inc.* 167 Wn. App. 77, 88, 272 P.3d 865 (2012); *Sangster v. Albertson's, Inc.*, 99 Wn. App. 156, 160, 991 P.2d 674 (2000). Specifically, “because of the difficulty of proving a discriminatory motivation.” *Scrivener v. Clark College*, 181 Wn.2d 439,

445, 334 P.3d 541, 545 (2014). *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 144, 94 P.3d 930 (2004).

In order to overcome a motion for summary judgment in discrimination cases there is no requirement that the aggrieved employee produced "smoking gun" evidence of a discriminatory and/or a retaliatory intent. See *Rice v. Offshore Systems, Inc.* 167 Wn. App. at 89; *Selstead v. Washington Mutual Savings Bank*, 69 Wn. App. 852, 860, 851 P.2d 716 (1993). Circumstantial, indirect and inferential evidence is sufficient to overcome an employer's motion for summary judgment in a discrimination case. *Id.*

Washington State's Law Against Discrimination (WLAD) is found in chapter 49.60 RCW. The purpose of this law is to prevent discrimination in the workplace. *RCW 49.60.010*.

"This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the



rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.” *RCW 49.60.010*.

This statute directs courts to construe WLAD liberally. *RCW 49.60.020*.

The Washington State Supreme Court has addressed and provided guidance in the adjudication of RCW 49.60 claims where the employee is relying solely on circumstantial evidence. Where plaintiff’s do not have direct evidence, Washington courts have applied the procedures articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), to determine the order and nature of proof for summary judgment. *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 667, 880 P.2d 988 (1994).

In *McDonnell Douglas*, a plaintiff bears the initial burden of establishing a prima facie case of discrimination, which creates a presumption of discrimination. *Scrivener v. Clark College*, 181 Wn.2d 439,

445, 334 P.3d 541, 546 (2014); *Riehl*, 152 Wn.2d at 149-50; *Kastanis v. Educ. Emps. Credit Union*, 122 Wn.2d 483, 490, 859 P.2d 26, 865 P.2d 507 (1993). Once the plaintiff establishes a prima facie case, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. In *Scrivener v. Clark College*, 181 Wn.2d at 446; *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 363-64, 753 P.2d 517 (1988).

"If the Defendant meets this burden, the third prong of the *McDonnell Douglas* test requires the Plaintiff to produce sufficient evidence that Defendant's alleged nondiscriminatory reason for [the employment action] was a pretext." *Hume*, 124 Wn.2d at 667. Evidence is sufficient to overcome summary judgment if it creates a genuine issue of material fact that the employer's articulated reason was a pretext for a discriminatory purpose. *Id.* at 668; *Grimwood*, 110 Wn.2d at 364; *Riehl*, 152 Wn.2d at 150.

If the plaintiff satisfies the *McDonnell Douglas* burden of production requirements, the case proceeds to trial, unless the judge determines that no rational fact finder could conclude that the action was discriminatory. *Hill v. BCTI Income Fund-I*, 144 Wn.2d 172, 186, 188-89, 23 P.3d 440 (2001), *overruled on other grounds by McClarty v. Totem Elec.*, 157 Wn.2d 214, 137 P.3d 844 (2006).

In *Scrivener*, the Supreme Court held that in order to overcome summary judgment in an RCW 49.60 claim, “An employee may satisfy the pretext prong by offering sufficient evidence to create a genuine issue of material fact either (1) that the defendant's reason is pretextual or (2) that although the employer's stated reason is legitimate, discrimination nevertheless was a substantial factor motivating the employer.” *Scrivener v. Clark College*, 181 Wn.2d at 446-447; *Fell v. Spokane Transit Auth.*, 128 Wn.2d 618, 643 n.32, 911 P.2d 1319 (1996); see *Wilmot v. Kaiser Alum. & Chem. Corp.*, 118 Wn.2d 46, 73, 821 P.2d 18 (1991).

Moreover, the *Scrivener* opinion went on to provide:

“An employee does not *need* to disprove each of the employer's articulated reasons to satisfy the pretext burden of production. Our case law clearly establishes that it is the plaintiff's burden at trial to prove that discrimination was *a* substantial factor in an adverse employment action, not the only motivating factor. An employer may be motivated by multiple purposes, both legitimate and illegitimate, when making employment decisions and still be liable under the WLAD.”<sup>63</sup>

Under Washington law, discriminatory remarks made within the workplace are considered to be direct evidence of a discriminatory intent.

*Alonso v. Qwest Communications Co., LLC*, 178 Wn. App. 734, 315 P.3d

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<sup>63</sup> *Scrivener v. Clark College*, 181 Wn.2d 439, 447, 334 P.3d 541, 546 (2014).

610 (2013). “Under the direct evidence test, a plaintiff can establish a prima facie case by providing direct evidence that (1) the defendant employer acted with a discriminatory motive and (2) the discriminatory motivation was a significant or substantial factor in an employment decision.” *Alonso v. Qwest Communications Co., LLC*, 178 Wn. App. 734, 744, 315 P.3d 610, 616 (2013); *Kastanis v. Educ. Emps. Credit Union*, 122 Wn.2d 483, 491, 859 P.2d 26, 30 (1993). “A demotion or adverse transfer, or a hostile work environment, may also amount to an adverse employment action.” *Alonso v. Qwest Communications Co., LLC*, 178 Wn. App. at 746; *Kirby v. City of Tacoma*, 124 Wn. App. 454, 465, 98 P.3d 827 (2004), review denied, 154 Wn.2d 1007 (2005).

In the case at bar, there are valid questions of fact whether Felicia Wilson voluntarily resigned, or was constructively terminated. It is well recognized that an employee's resignation is presumed voluntary and the employee bears the burden of rebutting this presumption. *Travis v. Tacoma Public School Dist.*, 120 Wn. App. 542, 85 P.3d 959, (2004). However, a resignation, under pressure, duress or when the employee has an impaired mental state may not be deemed to be voluntary. *Scharf v. Department Of The Air Force*, 710 F.2d 1572 (Fed. Cir. 1983).

Further, even if Felicia Wilson was not actually terminated, there



should be no question that she was the victim of a constructive discharge. A constructive discharge occurs when (1) the employer deliberately makes working conditions intolerable for the employee, (2) a reasonable person would be forced to resign, (3) the employee resigns solely because of the intolerable conditions, and (4) the employee suffers damages as a result. See, *Campbell v. State*, 129 Wn.App. 10, 23, 118 P.3d 888 (2005).

In the case at bar, Ms. Wilson was subjected to numerous acts of racial discrimination and retaliation, which had a potential for extreme embarrassment and humiliation if not properly managed. Ms. Wilson was a victim of a litany of administrative harassment discussed in great detail above. A reasonable jury could easily conclude that for a "sane person," resignation was the only real alternative.

The trial court entirely disregarded the direct evidence of racial discrimination presented by Ms. Wilson at the summary judgment motion. Ms. Wilson presented evidence that staff members were told to write down everything that she did, and report that back to supervisors. No other employees were treated in such a manner. The trial court also disregarded the direct evidence presented by Ms. Wilson in her own testimony of being yelled at, meeting times changed without informing her, correcting her use of ethnic words, standing in front of her in an intimidating manner, interfering with the

department that she managed by taking away staff resources, and being watched all the time.

Ms. Wilson was the only African American manager at Timberland. She was treated different from others on the management team, and at every turn her supervisors were trying to sabotage her employment. It is a question for the jury to decide whether the totality of the employer's actions are based on race, retaliatory, and whether these actions created a hostile work environment. The trial judge also disregarded the direct testimony presented by Mrs. Wilson during the summary judgment motion of other fellow employees noticing the hostility two supervisors had towards Ms. Wilson, and how she was treated differently. Finally, the trial court replaced it's belief regarding circumstantial evidence with what should have been the jury's determination for any issues, including whether Timberland employees sabotaged Ms. Wilson's ability to be hired with Pierce County. It is a jury's decision to listen to the witnesses and determine truthfulness. The timing of the lunch between a her supervisor, director Heywood, and Ms. Lomax, director at the Pierce County library is more than suspicious. Particularly when there is an admission of discussing at that lunch that Ms. Wilson applied for a job at Pierce County, but a claim by director Heywood that she made no comment about Ms. Wilson. This is unbelievable, as Ms. Wilson

was the most qualified applicant, but did not get the position after this lunch between her supervisor and the Pierce County library director.

The trial court also disregarded the evidence presented with regards to the EEOC charge. Specifically, the retaliation that Ms. Wilson was subjected to after filing the charge. It is an issue of fact whether the criticizing of Ms. Wilson's speech was race based. It is also an issue of fact whether Tardiff's actions encroaching on Mrs. Wilson department was racial based. Finally, it is an issue of fact whether alleged actions of director Heywood and Tardiff took place, and whether said actions were racially based, and created a hostile work place.

The trial court instead of looking at the evidence presented, both direct and circumstantial, somehow disregarded it all by stating that there is no admissible evidence sufficient to overcome summary judgment."<sup>64</sup> Ms. Wilson alleges that her testimony alone was sufficient to overcome a motion for summary. Moreover, the testimony of Timberland employees who witnessed the hostility and other actions toward Ms. Wilson was sufficient evidence to proceed to trial.

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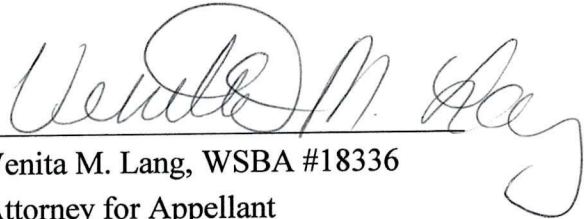
<sup>64</sup> Verbatim Report of Proceedings (VRP) at 15.

V. CONCLUSION

As detailed in the case file, Ms. Wilson presented the trial judge with sufficient overt and subtle evidence of racial discrimination. The trial judge failed to view the presented evidence in a light most favorable to Ms. Wilson, the non-moving party. Additionally, the trial judge entirely disregarded disputed facts that should be decided by a jury.

Based on the aforementioned reasons, Ms. Wilson respectfully requests that this court reverse the trial court's order granting Timberland's motion for summary judgement.

Dated this 5<sup>th</sup> day of November 2018.

A handwritten signature in cursive script, appearing to read "Venita M. Lang", is written over a horizontal line.

Venita M. Lang, WSBA #18336  
Attorney for Appellant

6212 34TH Street NW  
Gig Harbor, WA 98335  
(253) 265-1235



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

FELICIA WILSON,

Appellant.

v.

TIMBERLAND REGIONAL LIBRARY,

Respondent.

No. 51962-3-II


**Certificate of Service**

I Venita M. Lang certify that on the 5<sup>th</sup> day of November, 2018, I caused a true and correct copy of this Brief of Appellant to be served on the following in the manner indicated below:

Counsel for Defendant:  
Jerry Moberg & Associates, P.S.  
Attn: Brian A. Christensen  
P.O. Box 130  
Ephrata, WA 98823

(x) U.S. Mail, postage prepaid

Dated this 5<sup>th</sup> day of November, 2018

  
Venita M. Lang WSBA #18336  
Attorney for Appellant

**Certificate of Service**  
Page 1 of 1

Venita M. Lang  
Attorney at Law  
6212 34<sup>TH</sup> Street NW  
Gig Harbor, WA 98335  
(253) 265-1235